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SUBJECT: DEMARCHE TO CANADA ON SPECIAL 301 OUT-OF-CYCLE
REVIEW

REF: SECSTATE 173476

1. On September 20, Econoffs met with officials of International Trade Canada's (ITCan) Intellectual Property Division to discuss the plan of action for Canada's upcoming Special 301 out-of-cycle review (reftel). After reciting their usual criticism of the Special 301 process in general, the Canadians' primary objections were that the plan of action does not seem to give them credit for progress already made and that the tone of the plan is too 'one-way' and dictatorial. ITCan emphasized again that it will be easier to motivate Canadian officials and policy-makers if the out-of-cycle review is couched in terms of bilateral team-work and the Security and Prosperity Partnership (SPP). ITCan fears that a document such as the plan of action, if made public, would have the result of offending the very officials USTR hopes will make progress on Intellectual Property Rights (IPR) protection.

2. "The more I read the more (annoyed) I get" was the reaction of our main ITCan interlocutor. With the caveat that an official response would have to wait until they have had time to read the plan of action in detail, ITCan gave an initial negative feedback on the overall tone of the plan. In the interests of bilateral relations, and in recognition of the fact that certain U.S. and Canadian agencies have stepped up cooperation on IPR protection (for example the recent Royal Canadian Mounted Police and Canada Border Services Agency visit to DHS headquarters), Embassy believes it would be helpful to phrase the plan of action more in terms of cooperation than censure.

3. The Canadians were quite concerned about the text of the upcoming Federal Register notice, and they requested advance notice of the timing and the text of the notice so that they can prepare International Trade Minister Peterson for damage control. We have since given ITCan the draft text provided by USTR (comment: According to USTR, the draft text as submitted to the Federal Register reads: "On April 30, 2005, USTR announced the results of the 2005 Special 301 review and stated that Out-of-Cycle Reviews (OCRs) would be conducted for Russia, Canada, Indonesia and the Philippines. USTR will conduct these OCRs in early 2005. USTR requests written comments from the public concerning the acts, policies, and practices relevant for this review under Section 182 of the Trade Act." End comment.)

4. On the subject of a U.S.-Canada IPR working group (reftel paragraph 5), ITCan officials noted their IPR efforts in a number of fora, suggesting that they are approaching 'working-group overload'. ITCan suggested that a working group with minimal administrative requirements (possibly formed on the edges of SPP or other already-scheduled meetings) would be helpful to them. (Comment: A 'virtual working group', utilizing digital video conference technology and email, might be a potential alternative. End comment.)

5. We have requested more detailed feedback on the plan of action from ITCan and other members of the Canadian working group on IPR and will pass any comments on to USTR and the desk when we receive them.

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WILKINS